

8/ Election
w/ traverse
Beiersdorf 749-HCL
6713-Dr. Rs-hf 200/282

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : DRUCKS et al.
SERIAL NO. : 10/001,565
FILED : 15 NOVEMBER 2001
FOR : COSMETIC OR DERMATOLOGICAL IMPREGNATED WIPES
ART UNIT : 1619
EXAMINER : Jennifer Kim

29 April 2003

Hon. Commissioner of Patents
Washington, D.C. 20231

Bel
5-2-03

RESPONSE TO RESTRICTION REQUIREMENT

SIR:

In response to the restriction requirement dated 26 March 2003, Applicants hereby elect with traverse to prosecute the invention of claim 4 (see Remarks section below for further clarification).

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of this response to the restriction requirement requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Election and Summary of Telephone Conversation

The applicants' elect the invention represented by forms disclosed in claim 4 which is directed toward a wipe moistened with an impregnation solution having a viscosity less than 2000 mPa.s.

The applicants' U.S. representative telephoned the examiner to convey the results of a discussion with the applicants' German representative which indicated that if the election was considered from the perspective of the examiner, it appears the subject matter of claim 4 could've been included in the election of species requirement. Although the applicants request that the entire invention be examined, if the election is maintained, it is requested that the subject matter of claim 4 be examined.

If this is not possible (or if the election of claim 4 cannot be correlated to a selection based on the examiner's original choices of oils or alcohol), it is requested that the examiner telephone the undersigned so that an oral election can be made. Applicants reserve the right to prosecute the subject matter of the non-elected claims in a divisional application, if such subject matter is not ultimately granted here.

Traversal of Election

Regarding the traversal, the applicants present that the election was made against the impregnation solutions but the invention is directed toward a wipe. For either situation, no reasons were given as to why claim 1 was deemed to be generic. (see MPEP 816 - "The particular reasons relied upon by the examiner for holding that the invention as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate.")

Moreover, even if claim 1 is generic to plurality of patentably distinct species, there must be some indication or reason why this plurality represents an undue burden upon the PTO. (see MPEP 803 - "If the search and examination of an entire application can be made without serious burden, *the examiner must examine it on the merits*, even though it includes claims to independent or distinct inventions.")

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Response to Restriction Requirement (2 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: 29 April 2003

By

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FACSIMILE COVER SHEET

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Date: 29 April 2003

To: Examiner Jennifer Kim
US Patent and Trademark Office
Tel. No. 703-308-2232
Fax: 703-308-4556

Subject: USSN 10/001,565
Our Ref.: Beiersdorf 749-HCL

From: Howard C. Lee

Comments: Filing of: response to Office Action dated 26 March 2003, including Response to Restriction Requirement (2 pgs.); and Petition for Extension of Time (2 pgs.)

If you have any questions or need further information, please contact us.

You should receive 5 pages including this cover sheet.

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